

3306(b) with the modifications specified in paragraph (2)."

Subsec. (b)(2). Pub. L. 99-272 amended par. (2) generally. Prior to amendment par. (2) read as follows: "(2) MODIFICATIONS.—In applying subsection (b) of section 3306 for purposes of paragraph (1)—

"(A) ONLY RAILROAD EMPLOYMENT TAKEN INTO ACCOUNT.—Such subsection (b) shall be applied—

"(i) by substituting 'rail employment' for 'employment' each place it appears, and

"(ii) by substituting 'rail employer' for 'employer' each place it appears.

"(B) WAGE BASE FOR FIRST TAXABLE PERIOD.—In the case of the taxable period beginning on July 1, 1986, and ending on December 31, 1986, such subsection (b) shall be applied by substituting '\$3,500' for '\$7,000' each place it appears in paragraph (1) thereof.

"(C) WAGE BASE FOR LAST TAXABLE PERIOD.—In the case of the taxable period beginning on January 1, 1990, and ending on September 30, 1990, such subsection (b) shall be applied by substituting '\$5,250' for '\$7,000' each place it appears in paragraph (1) thereof."

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Sec.
3406. Backup withholding.

AMENDMENTS

1983—Pub. L. 98-67, title 1, §§ 102(a), 104(d)(4), Aug. 5, 1983, 97 Stat. 369, 380, added item 3406 and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 31, 274, 280F, 3121, 3306, 3502, 3507, 3509, 6011, 6013, 6051, 6103, 6361, 6362, 6365, 6414, 6501, 6513, 6682, 7654, 7872 of this title; title 5 section 5901; title 42 section 409; title 48 section 1421i.

§ 3401. Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

[See main edition for text of (1) to (7)]

(8) [See main edition for text of (A) to (C)]

(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States (or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; or

[See main edition for text of (9) to (11)]

(12) to, or on behalf of, an employee or his beneficiary—

[See main edition for text of (A) and (B)]

(C) for a payment described in section 219 if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for payment; or

[(D) Redesignated (C)]

[See main edition for text of (13) to (17)]

(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129;

(19) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(b)(6)); or

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132.

[See main edition for text of (b) to (f)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(d)(38), title V, § 531(d)(4), 98 Stat. 851, 885; Oct. 22, 1986, Pub. L. 99-514, title I, § 122(e)(4), title XII, § 1272(c), 100 Stat. 2112, 2594.)

AMENDMENTS

1986—Subsec. (a)(8)(D). Pub. L. 99-514, § 1272(c), added subpar. (D).

Subsec. (a)(20). Pub. L. 99-514, § 122(e)(4), inserted reference to section 74(c).

1984—Subsec. (a). Pub. L. 98-369, § 531(d)(4)(A), inserted "(including benefits)" in introductory provisions.

Subsec. (a)(12). Pub. L. 98-369, § 491(d)(38), struck out subpar. (C) which provided: "under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);" and redesignated subpar. (D) as (C).

Subsec. (a)(20). Pub. L. 98-369, § 531(d)(4)(B), added par. (20).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(4) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1272(c) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(38) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Amendment by section 531(d)(4) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

CONTROVERSIES INVOLVING WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF EMPLOYMENT TAXES

Section 530 of Pub. L. 95-600, as amended by Pub. L. 98-167, § 9(d), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96-541, § 1, Dec. 17, 1980, 94 Stat. 3204; Pub. L. 97-248, title II, § 269(c)(1), (2), 96 Stat. 552; Pub. L. 99-514, § 2, title XVII, § 1706(a), Oct. 22, 1986, 100 Stat. 2095, 2781, provided that:

[See main edition for text of (a) and (b)]

“(c) DEFINITIONS.—For purposes of this section—

“(1) EMPLOYMENT TAX.—The term ‘employment tax’ means any tax imposed by subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 3101 et seq. of this title].

[See main edition for text of (2)]

“(d) EXCEPTION.—This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.”

[Section 1706(b) of Pub. L. 99-514 provided that: “The amendment made by this section [amending note above] shall apply to remuneration paid and services rendered after December 31, 1986.”]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 275, 3402, 3507, 3509, 4999, 6014, 6051, 6053, 6103, 6331, 6362 of this title.

§ 3402. Income tax collected at source

[See main edition for text of (a) to (e)]

(f) Withholding exemptions

(1) In general

An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) an exemption for himself unless he is an individual described in section 151(d)(2);

(B) if the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A) or (D), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption;

(C) an exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) any allowance to which he is entitled under subsection (m), but only if his spouse does not have in effect a withholding exemption certificate claiming such allowance; and

(E) a standard deduction allowance which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the Secretary) unless (i) he is married (as determined under section 7703) and his spouse is an employee receiving wages subject to withholding or (ii) he has withholding exemption certificates in effect with respect to more than one employer.

For purposes of this title, any standard deduction allowance under subparagraph (E) shall be treated as if it were denominated a withholding exemption.

[See main edition for text of (2)]

(3) When certificate takes effect

[See main edition for text of (A)]

(B) Furnished to take place of existing certificate

(i) In general

Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

(ii) Employer may elect earlier effective date

At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

(iii) Change of status which affects next year

Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished.

[See main edition for text of (4) to (7); (g) and (h)]

(i) Changes in withholding

(1) In general

The Secretary may by regulations provide for increases in the amount of withholding otherwise required under this section in cases where the employee requests such changes.

[See main edition for text of (2); (j) to (l)]

(m) Withholding allowances

Under regulations prescribed by the Secretary, an employee shall be entitled to additional withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by such regulations)—

[See main edition for text of (1) and (2)]

(3) such additional deductions (including the additional standard deduction under section 63(c)(3) for the aged and blind) and other items as may be specified by the Secretary in regulations.

[See main edition for text of (n) to (q)]

[(r) Repealed. Pub. L. 99-514, title XVIII, § 1303(b)(4), Oct. 22, 1986, 100 Stat. 2658]

(s) Exemption from withholding for any vehicle fringe benefit

(1) Employer election not to withhold

The employer may elect not to deduct and withhold any tax under this chapter with respect to any vehicle fringe benefit provided to any employee if such employee is notified by the employer of such election (at such time and in such manner as the Secretary shall by regulations prescribe). The preceding sentence shall not apply to any vehicle fringe benefit unless the amount of such benefit is included by the employer on a statement timely furnished under section 6051.

(2) Employer must furnish W-2

Any vehicle fringe benefit shall be treated as wages from which amounts are required to be deducted and withheld under this chapter for purposes of section 6051.

(3) Vehicle fringe benefit

For purposes of this subsection, the term "vehicle fringe benefit" means any fringe benefit—

(A) which constitutes wages (as defined in section 3401), and

(B) which consists of providing a highway motor vehicle for the use of the employee.

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 104(d)(3), 97 Stat. 380; May 24, 1985, Pub. L. 99-44, § 3, 99 Stat. 77; Oct. 22, 1986, Pub. L. 99-514, title I, § 104(b)(15), title XIII, §§ 1301(j)(8), 1303(b)(4), title XV, § 1581(b), 100 Stat. 2106, 2658, 2766; Dec. 22, 1987, Pub. L. 100-203, title X, § 10302(a), 101 Stat. 1330-429.)

AMENDMENTS

1987—Subsec. (f)(3)(B). Pub. L. 100-203 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For purposes of this subparagraph the term 'status determination date' means January 1, May 1, July 1, and October 1 of each year."

1986—Subsec. (f)(1). Pub. L. 99-514, § 104(b)(15)(F), substituted "standard deduction" for "zero bracket" and "subparagraph (E)" for "subparagraph (G)" in last sentence.

Subsec. (f)(1)(A). Pub. L. 99-514, § 104(b)(15)(B), inserted "unless he is an individual described in section 151(d)(2)" after "himself".

Subsec. (f)(1)(B). Pub. L. 99-514, § 104(b)(15)(A), redesignated subpar. (D) as (B) and struck out former subpar. (B) which read as follows: "one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c)(1) (relating to old age) for the taxable year

under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;"

Pub. L. 99-514, § 104(b)(15)(C), which directed that "subparagraph (A) or (D)" be substituted for "subparagraph (A), (B), (C), or (F)" was executed by making the substitution for "subparagraph (A), (B), or (C)", as the probable intent of Congress.

Subsec. (f)(1)(C). Pub. L. 99-514, § 104(b)(15)(A), (D), redesignated subpar. (E) as (C), substituted "section 151(c)" for "section 151(e)", and struck out former subpar. (C) which read as follows: "one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(d)(1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;"

Subsec. (f)(1)(D). Pub. L. 99-514, § 104(b)(15)(A), redesignated subpar. (F) as (D). Former subpar. (D) redesignated (B).

Subsec. (f)(1)(E). Pub. L. 99-514, § 104(b)(15)(A), (E), redesignated subpar. (G) as (E) and substituted "standard deduction" for "zero bracket". Former subpar. (E) redesignated (C).

Pub. L. 99-514, § 1301(j)(8), substituted "section 7703" for "section 143".

Subsec. (f)(1)(F), (G). Pub. L. 99-514, § 104(b)(15)(A), redesignated subpars. (F) and (G) as (D) and (E), respectively.

Subsec. (i)(1). Pub. L. 99-514, § 1581(b), struck out "or decreases" after "increases".

Subsec. (m)(3). Pub. L. 99-514, § 104(b)(15)(G), inserted "(including the additional standard deduction under section 63(c)(3) for the aged and blind)".

Subsec. (r). Pub. L. 99-514, § 1303(b)(4), struck out subsec. (r) which provided for extension of withholding to GSOC distributions.

1985—Subsec. (s). Pub. L. 99-44 added subsec. (s).

1983—Subsec. (s). Pub. L. 98-67 struck out subsec. (s) which related to extension of withholding to certain payments where identifying number was not furnished or was inaccurate. See section 3406 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10302(b) of Pub. L. 100-203 provided that: "The amendment made by subsection (a) [amending this section] shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act [Dec. 22, 1987]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(15) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1303(b)(4) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1311(d) of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 6(d) of Pub. L. 99-44 provided that: "The amendment made by section 3 [amending this section] shall take effect on January 1, 1985."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

WITHHOLDING ALLOWANCES TO REFLECT NEW RATE SCHEDULES

Section 1581(a) of Pub. L. 99-514 provided that: "The Secretary of the Treasury or his delegate shall modify the withholding schedules and withholding exemption certificates under section 3402 of the Internal Revenue Code of 1954 [now 1986] to better approximate actual tax liability under the amendments made by this Act [see Tables for classification]."

EMPLOYER'S RESPONSIBILITY UPON FAILURE OF EMPLOYER TO FILE REVISED WITHHOLDING ALLOWANCE CERTIFICATE BEFORE OCT. 1, 1987

Section 1581(c) of Pub. L. 99-514 provided that: "If an employee has not filed a revised withholding allowance certificate before October 1, 1987, the employer shall withhold income taxes from the employee's wages—

"(1) as if the employee claimed 1 withholding allowance, if the employee checked the 'single' box on the employee's previous withholding allowance certificate, or

"(2) as if the employee claimed 2 withholding allowances, if the employee checked the 'married' box on the employee's previous withholding allowance certificate."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31, 275, 3401, 3405, 3406, 3505, 3507, 3509, 4999, 6040, 6051, 6205, 6413, 6682, 7205 of this title; title 10 section 1408; title 42 section 662.

§ 3403. Liability for tax

[See main edition for text]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369.)

AMENDMENTS

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

§ 3405. Special rules for pensions, annuities, and certain other deferred income

[See main edition for text of (a)]

(b) Nonperiodic distribution

[See main edition for text of (1)]

(2) Amount of withholding

[See main edition for text of (A) and (B)]

(C) Special rule for distributions by reason of death

In the case of any nonperiodic distribution from or under any plan or contract described in section 401(a), 403(a), or 403(b)—

(i) which is made by reason of a participant's death, and

(ii) with respect to which the requirements of clauses (ii) and (iv) of subsection (d)(4)(A) are met,

subparagraph (A) or (B) (as the case may be) shall be applied by taking into account the exclusion from gross income provided by section 101(b) (whether or not allowable).

[See main edition for text of (3); (c)]

(d) Definitions and special rules

For purposes of this section—

(1) Designated distribution

[See main edition for text of (A)]

(B) Exceptions

The term "designated distribution" shall not include—

(i) any amount which is wages without regard to this section,

(ii) the portion of a distribution or payment which it is reasonable to believe is not includible in gross income, and

(iii) any amount which is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty, or

(iv) any distribution described in section 404(k)(2).

For purposes of clause (ii), any distribution or payment from or under an individual retirement plan shall be treated as includible in gross income.

[See main edition for text of (2) to (7)]

(8) Maximum amount withheld

The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than employer securities of the employer corporation (within the meaning of section 402(a)(3))) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of \$200) in lieu of fractional shares.

[See main edition for text of (9) to (11)]

(12) Failure to provide correct TIN

If—

(A) a payee fails to furnish his TIN to the payor in the manner required by the Secretary, or

(B) the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect,

no election under subsection (a)(2) or (b)(3) shall be treated as in effect and subsection (a)(4) shall not apply to such payee.

(13) Election may not be made with respect to certain payments outside the United States

(A) In general

Except as provided in subparagraph (B), in the case of any periodic payment or nonperiodic distribution which is to be delivered outside of the United States, no election may be made under subsection (a)(2) or (b)(3) with respect to such payment.

(B) Exception

Subparagraph (A) shall not apply if the recipient certifies to the payor, in such

manner as the Secretary may prescribe, that such person is not—

- (i) a United States citizen who is a bona fide resident of a foreign country, or
- (ii) an individual to whom section 877 applies.

[See main edition for text of (e)]

(As amended Pub. L. 98-369, div. A, title V, § 542(c), title VII, §§ 714(j)(1), (4), (5), 722(h)(4)(A), July 18, 1984, 98 Stat. 891, 962, 963, 976; Pub. L. 99-514, title XI, § 1102(e)(1), title XII, § 1234(b)(1), title XVIII, § 1875(c)(10), Oct. 22, 1986, 100 Stat. 2416, 2566, 2895.)

AMENDMENTS

1986—Subsec. (d)(1)(B). Pub. L. 99-514, § 1102(e)(1), inserted last sentence for “For purposes of clause (ii), any distribution or payment from or under an individual retirement plan shall be treated as includible in gross income.”

Subsec. (d)(1)(B)(iii), (iv). Pub. L. 99-514, § 1875(c)(10), reenacted cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3 as cl. (iii) and reenacted cl. (iii) relating to distribution described in section 404(k)(2) as cl. (iv).

Subsec. (d)(13). Pub. L. 99-514, § 1234(b)(1), added par. (13).

1984—Subsec. (b)(2)(C). Pub. L. 98-369, § 714(j)(1), substituted “nonperiodic distribution” for “distribution described in subparagraph (B)” and “subparagraph (A) or (B) (as the case may be) shall be applied by taking into account” for “the Secretary, in prescribing tables or procedures under paragraph (1), shall take into account”, designated phrase “which is made by reason of a participant’s death” as cl. (i) and added cl. (ii).

Subsec. (d)(1)(B)(iii). Pub. L. 98-369, § 714(j)(4), added cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3.

Pub. L. 98-369, § 542(c), added cl. (iii) relating to distributions described in section 404(k)(2). Directory language that section (d)(1)(B) be amended by striking out “and” at end of cl. (i) and substituting “, or” for the period at end of cl. (ii) could not be executed in view of prior amendment by section 714(j)(4) of Pub. L. 98-369, which struck out “and” at end of cl. (i) and substituted “, and” for the period at end of cl. (ii).

Subsec. (d)(8). Pub. L. 98-369, § 714(j)(5), freed from withholding requirement any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of \$200) in lieu of fractional shares.

Subsec. (d)(12). Pub. L. 98-369, § 722(h)(4), added par. (12).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(e)(1) of Pub. L. 99-514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99-514, set out as a note under section 219 of this title.

Section 1234(b)(2) of Pub. L. 99-514 provided that: “The amendment made by this subsection [amending this section] shall apply to payments after December 31, 1986.”

Amendment by section 1875(c)(10) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 542(c) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984,

see section 542(d) of Pub. L. 98-369, set out as a note under section 404 of this title.

Amendment by section 714 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 722(h)(4)(A) of Pub. L. 98-369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98-369, set out as a note under section 643 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by section 1102(e)(1) of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 6047, 6652 of this title; title 5 section 8348.

§ 3406. Backup withholding

(a) Requirement to deduct and withhold

(1) In general

In the case of any reportable payment, if—

(A) the payee fails to furnish his TIN to the payor in the manner required,

(B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect,

(C) there has been a notified payee under-reporting described in subsection (c), or

(D) there has been a payee certification failure described in subsection (d),

then the payor shall deduct and withhold from such payment a tax equal to 20 percent of such payment.

(2) Subparagraphs (C) and (D) of paragraph (1) apply only to interest and dividend payments

Subparagraphs (C) and (D) of paragraph (1) shall apply only to reportable interest or dividend payments.

(b) Reportable payment, etc.

For purposes of this section—

(1) Reportable payment

The term “reportable payment” means—

(A) any reportable interest or dividend payment, and

(B) any other reportable payment.

(2) Reportable interest or dividend payment

(A) In general

The term “reportable interest or dividend payment” means any payment of a kind, and to a payee, required to be shown on a return required under—

(i) section 6049(a) (relating to payments of interest),

(ii) section 6042(a) (relating to payments of dividends), or

(iii) section 6044 (relating to payments of patronage dividends) but only to the extent such payment is in money.

(B) Special rule for patronage dividends

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term "reportable interest or dividend payment" shall not include any payment to which section 6044 (relating to patronage dividends) applies unless 50 percent or more of such payment is in money.

(3) Other reportable payment

The term "other reportable payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(A) section 6041 (relating to certain information at source),

(B) section 6041A(a) (relating to payments of remuneration for services),

(C) section 6045 (relating to returns of brokers),

(D) section 6050A (relating to reporting requirements of certain fishing boat operators), but only to the extent such payment is in money and represents a share of the proceeds of the catch, or

(E) section 6050N (relating to payments of royalties).

(4) Whether payment is of reportable kind determined without regard to minimum amount

The determination of whether any payment is of a kind required to be shown on a return described in paragraph (2) or (3) shall be made without regard to any minimum amount which must be paid before a return is required.

(5) Exception for certain small payments

To the extent provided in regulations, the term "reportable payment" shall not include any payment which—

(A) does not exceed \$10, and

(B) if determined for a 1-year period, would not exceed \$10.

(6) Other reportable payments include payments described in section 6041(a) or 6041A(a) only where aggregate for calendar year is \$600 or more

Any payment of a kind required to be shown on a return required under section 6041(a) or 6041A(a) which is made during any calendar year shall be treated as a reportable payment only if—

(A) the aggregate amount of such payment and all previous payments described in such sections by the payor to the payee during such calendar year equals or exceeds \$600,

(B) the payor was required under section 6041(a) or 6041A(a) to file a return for the preceding calendar year with respect to payments to the payee, or

(C) during the preceding calendar year, the payor made reportable payments to the payee with respect to which amounts were required to be deducted and withheld under subsection (a).

(7) Exception for certain window payments of interest, etc.

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term "reportable interest or dividend payment" shall not include any payment—

(A) in redemption of a coupon on a bearer instrument or in redemption of a United States savings bond, or

(B) to the extent provided in regulations, of interest on instruments similar to those described in subparagraph (A).

The preceding sentence shall not apply for purposes of determining whether there is payee underreporting described in subsection (c).

(c) Notified payee underreporting with respect to interest and dividends

(1) Notified payee underreporting

If—

(A) the Secretary determines with respect to any payee that there has been payee underreporting,

(B) at least 4 notices have been mailed by the Secretary to the payee (over a period of at least 120 days) with respect to the underreporting, and

(C) in the case of any payee who has filed a return for the taxable year, any deficiency of tax attributable to such failure has been assessed,

the Secretary may notify payors of reportable interest or dividend payments with respect to such payee of the requirement to deduct and withhold under subsection (a)(1)(C) (but not the reasons for the withholding under subsection (a)(1)(C)).

(2) Payee underreporting defined

For purposes of this section, there has been payee underreporting if for any taxable year the Secretary determines that—

(A) the payee failed to include in his return of tax under chapter 1 for such year any portion of a reportable interest or dividend payment required to be shown on such return, or

(B) the payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

(3) Determination by secretary to stop (or not to start) withholding

(A) In general

If the Secretary determines that—

(i) there was no payee underreporting,

(ii) any payee underreporting has been corrected (and any tax, penalty, or interest with respect to the payee underreporting has been paid),

(iii) withholding under subsection (a)(1)(C) has caused (or would cause) undue hardship to the payee and it is unlikely that any payee underreporting by such payee will occur again, or

(iv) there is a bona fide dispute as to whether there has been any payee underreporting,

then the Secretary shall take the action described in subparagraph (B).

(B) Secretary to take action to stop (or not to start) withholding

For purposes of subparagraph (A), if at the time of the Secretary's determination under subparagraph (A)—

(i) no notice has been given under paragraph (1) to any payor with respect to the underreporting, the Secretary shall not give any such notice, or

(ii) if such notice has been given, the Secretary shall—

(I) provide the payee with a written certification that withholding under subsection (a)(1)(C) is to stop, and

(II) notify the applicable payors (and brokers) that such withholding is to stop.

(C) Time for taking action where notice to payor has been given

In any case where notice has been given under paragraph (1) to any payor with respect to any underreporting, if the Secretary makes a determination under subparagraph (A) during the 12-month period ending on October 15 of any calendar year—

(i) except as provided in clause (ii), the Secretary shall take the action described in subparagraph (B)(ii) to bring about the stopping of withholding no later than December 1 of such calendar year, or

(ii) in the case of—

(1) a no payee underreporting determination under clause (i) of subparagraph (A), or

(II) a hardship determination under clause (iii) of subparagraph (A),

such action shall be taken no later than the 45th day after the day on which the Secretary made the determination.

(D) Opportunity to request determination

The Secretary shall prescribe procedures under which—

(i) a payee may request a determination under subparagraph (A), and

(ii) the payee may provide information with respect to such request.

(4) Payor notifies payee of withholding because of payee underreporting

Any payor required to withhold any tax under subsection (a)(1)(C) shall, at the time such withholding begins, notify the payee of such withholding.

(5) Payee may be required to notify Secretary who his payors and brokers are

For purposes of this section, the Secretary may require any payee of reportable interest or dividend payments who is subject to withholding under subsection (a)(1)(C) to notify the Secretary of—

(A) all payors from whom the payee receives reportable interest or dividend payments, and

(B) all brokers with whom the payee has accounts which may involve reportable interest or dividend payments.

The Secretary may notify any such broker that such payee is subject to withholding under subsection (a)(1)(C).

(d) Interest and dividend backup withholding applies to new accounts and instruments unless payee certifies that he is not subject to such withholding

(1) In general

There is a payee certification failure unless the payee has certified to the payor, under penalty of perjury, that such payee is not subject to withholding under subsection (a)(1)(C).

(2) Special rules for readily tradable instruments

(A) In general

Subsection (a)(1)(D) shall apply to any reportable interest or dividend payment to any payee on any readily tradable instrument if (and only if) the payor was notified by a broker under subparagraph (B) or no certification was provided to the payor by the payee under paragraph (1) and—

(i) such instrument was acquired directly by the payee from the payor, or

(ii) such instrument is held by the payor as nominee for the payee.

(B) Broker notifies payor

If—

(i) a payee acquires any readily tradable instrument through a broker, and

(ii) with respect to such acquisition—

(I) the payee fails to furnish his TIN to the broker in the manner required under subsection (a)(1)(A),

(II) the Secretary notifies such broker before such acquisition that the TIN furnished by the payee is incorrect,

(III) the Secretary notifies such broker before such acquisition that such payee is subject to withholding under subsection (a)(1)(C), or

(IV) the payee does not provide a certification to such broker under subparagraph (C),

such broker shall, within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C), or (D) of subsection (a)(1), respectively.

(C) Time for payee to provide certification to broker

In the case of any readily tradable instrument acquired by a payee through a broker, the certification described in paragraph (1) may be provided by the payee to such broker—

(i) at any time after the payee's account with the broker was established and before the acquisition of such instrument, or

(ii) in connection with the acquisition of such instrument.

(3) Exception for existing accounts, etc.

This subsection and subsection (a)(1)(D) shall not apply to any reportable interest or dividend payment which is paid or credited—

(A) in the case of interest or any other amount of a kind reportable under section 6049, with respect to any account (whatever called) established before January 1, 1984, or with respect to any instrument acquired before January 1, 1984,

(B) in the case of dividends or any other amount reportable under section 6042, on any stock or other instrument acquired before January 1, 1984, or

(C) in the case of patronage dividends or other amounts of a kind reportable under section 6044, with respect to any membership acquired, or contract entered into, before January 1, 1984.

(4) Exception for readily tradable instruments acquired through existing brokerage accounts

Subparagraph (B) of paragraph (2) shall not apply with respect to a readily tradable instrument which was acquired through an account with a broker if—

(A) such account was established before January 1, 1984, and

(B) during 1983, such broker bought or sold instruments for the payee (or acted as a nominee for the payee) through such account.

The preceding sentence shall not apply with respect to any readily tradable instrument acquired through such account after the broker was notified by the Secretary that the payee is subject to withholding under subsection (a)(1)(C).

(e) Period for which withholding is in effect

(1) Failure to furnish TIN

In the case of any failure by a payee to furnish his TIN to a payor in the manner required, subsection (a) shall apply to any reportable payment made by such payor during the period during which the TIN has not been furnished in the manner required. The Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

(2) Notification of incorrect number

In any case in which the Secretary notifies the payor that the TIN furnished by the payee is incorrect, subsection (a) shall apply to any reportable payment made by such payor—

(A) after the close of the 30th day after the day on which the payor received such notification, and

(B) before the payee furnishes another TIN in the manner required.

(3) Notified payee underreporting described in subsection (c)

(A) In general

In the case of any notified payee underreporting described in subsection (c), subsection (a) shall apply to any reportable interest or dividend payment made—

(i) after the close of the 30th day after the day on which the payor received notification from the Secretary of such underreporting, and

(ii) before the stop date.

(B) Stop date

For purposes of this subsection, the term “stop date” means the determination effective date or, if later, the earlier of—

(i) the day on which the payor received notification from the Secretary under subsection (c)(3)(B) to stop withholding, or

(ii) the day on which the payor receives from the payee a certification provided by the Secretary under subsection (c)(3)(B).

(C) Determination effective date

For purposes of this subsection—

(i) In general

Except as provided in clause (ii), the determination effective date of any determination under subsection (c)(3)(A) which is made during the 12-month period ending on October 15 of any calendar year shall be the first January 1 following such October 15.

(ii) Determination that there was no underreporting; hardship

In the case of any determination under clause (i) or (iii) of subsection (c)(3)(A), the determination effective date shall be the date on which the Secretary's determination is made.

(4) Failure to provide certification that payee is not subject to withholding

(A) In general

In the case of any payee certification failure described in subsection (d)(1), subsection (a) shall apply to any reportable interest or dividend payment made during the period during which the certification described in subsection (d)(1) has not been furnished to the payor.

(B) Special rule for readily tradable instruments acquired through broker where notification

In the case of any readily tradable instrument acquired by the payee through a broker, the period described in subparagraph (A) shall start with payments to the payee made after the close of the 30th day after the payor receives notification from a broker under subsection (d)(2)(B).

(5) 30-day grace periods

(A) Start-up

If the payor elects the application of this subparagraph with respect to the payee, subsection (a) shall also apply to any re-

portable payment made during the 30-day period described in paragraph (2)(A), (3)(A), or (4)(B).

(B) Stopping

Unless the payor elects not to have this subparagraph apply with respect to the payee, subsection (a) shall also apply to any reportable payment made after the close of the period described in paragraph (1), (2), or (4) (as the case may be) and before the 30th day after the close of such period. A similar rule shall also apply with respect to the period described in paragraph (3)(A) where the stop date is determined under clause (i) or (ii) of paragraph (3)(B).

(C) Election of shorter grace period

The payor may elect a period shorter than the grace period set forth in subparagraph (A) or (B), as the case may be.

(f) Confidentiality of information

(1) In general

No person may use any information obtained under this section (including any failure to certify under subsection (d)) except for purposes of meeting any requirement under this section or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103.

(2) Cross reference

For provision providing for civil damages for violation of paragraph (1), see section 7431.

(g) Exceptions

(1) Payments to certain payees

Subsection (a) shall not apply to any payment made to—

(A) any organization or governmental unit described in subparagraph (B), (C), (D), (E), or (F) of section 6049(b)(4), or

(B) any other person specified in regulations.

(2) Amounts for which withholding otherwise required

Subsection (a) shall not apply to any amount for which withholding is otherwise required by this title.

(3) Exemption while waiting for TIN

The Secretary shall prescribe regulations for exemptions from the tax imposed by subsection (a) during the period during which a person is waiting for receipt of a TIN.

(h) Other definitions and special rules

For purposes of this section—

(1) Obviously incorrect number

A person shall be treated as failing to furnish his TIN if the TIN furnished does not contain the proper number of digits.

(2) Payee furnishes 2 incorrect TINs

If the payee furnishes the payor 2 incorrect TINs in any 3-year period, the payor shall, after receiving notice of the second incorrect TIN, treat the payee as not having furnished another TIN under subsection (e)(2)(B) until the day on which the payor receives notification from the Secretary that a correct TIN has been furnished.

(3) Joint payees

Except to the extent otherwise provided in regulations, any payment to joint payees shall be treated as if all the payment were made to the first person listed in the payment.

(4) Payor defined

The term “payor” means, with respect to any reportable payment, a person required to file a return described in paragraph (2) or (3) of subsection (b) with respect to such payment.

(5) Broker

(A) In general

The term “broker” has the meaning given to such term by section 6045(c)(1).

(B) Only 1 broker per acquisition

If, but for this subparagraph, there would be more than 1 broker with respect to any acquisition, only the broker having the closest contact with the payee shall be treated as the broker.

(C) Payor not treated as broker

In the case of any instrument, such term shall not include any person who is the payor with respect to such instrument.

(D) Real estate broker not treated as a broker

Except as provided by regulations, such term shall not include any real estate broker (as defined in section 6045(e)(2)).²

(6) Readily tradable instrument

The term “readily tradable instrument” means—

(A) any instrument which is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)), and

(B) except as otherwise provided in regulations prescribed by the Secretary, any instrument which is regularly quoted by brokers or dealers in making a market.

(7) Original issue discount

To the extent provided in regulations, rules similar to the rules of paragraph (6) of section 6049(d) shall apply.

(8) Requirement of notice to payee

Whenever the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect, the Secretary shall at the same time furnish a copy of such notice to the payor, and the payor shall promptly furnish such copy to the payee.

(9) Requirement of notice to Secretary

If the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect and such payee subsequently furnishes another TIN to the payor, the payor shall promptly notify the Secretary of the other TIN so furnished.

²So in original. Probably should be followed by a period.

(10) Coordination with other sections

For purposes of section 31, this chapter (other than section 3402(n)), and so much of subtitle F (other than section 7205) as relates to this chapter, payments which are subject to withholding under this section shall be treated as if they were wages paid by an employer to an employee (and amounts deducted and withheld under this section shall be treated as if deducted and withheld under section 3402).

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98-67, title I, § 104(a), Aug. 5, 1983, 97 Stat. 371, and amended Pub. L. 98-369, div. A, title I, § 152(a), title VII, § 722(h)(1), (2), July 18, 1984, 98 Stat. 691, 975; Pub. L. 99-514, title XV, §§ 1521(b), 1523(b)(1), title XVIII, § 1899A(46), Oct. 22, 1986, 100 Stat. 2746, 2748, 2961.)

AMENDMENTS

1986—Subsec. (b)(3)(E). Pub. L. 99-514, § 1523(b)(1), added subpar. (E).

Subsec. (b)(6). Pub. L. 99-514, § 1899A(46), substituted “6041A(a)” for “6041(A)(a)” in heading.

Subsec. (h)(5)(D). Pub. L. 99-514, § 1521(b), added subpar. (D).

1984—Subsec. (c)(1). Pub. L. 98-369, § 722(h)(2), substituted “(but not the reasons for the withholding under subsection (a)(1)(C))” for “(but not the reasons therefor)”.

Subsec. (d)(2)(A). Pub. L. 98-369, § 722(h)(1)(A), inserted “the payor was notified by a broker under subparagraph (B) or” after “if (and only if)” in provisions preceding cl. (i), struck out cl. (i) which read as follows: “the payor was notified by a broker under subparagraph (B),” and redesignated cls. (ii) and (iii) as (i) and (ii), respectively.

Subsec. (d)(2)(B). Pub. L. 98-369, § 722(h)(1)(B), in amending subpar. (B) generally, reenacted cl. (i), in cl. (ii) inserted “with respect to such acquisition—”, added subcls. (I) and (II), redesignated former subcls. (I) and (II) as (III) and (IV), respectively, and in subcl. (III) substituted “the Secretary notifies such broker” for “such broker is notified by the Secretary”, and in provisions following cl. (ii) substituted “shall within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C) or (D) of subsection (a)(1),” for “within 15 days after the date of the acquisition notify the payor that such payee is subject to withholding under subsection (a)(1)(D) (or subsection (a)(1)(C) in the case of a notification described in clause (ii)(II)).”

Subsec. (e)(1). Pub. L. 98-369, § 152(a), inserted provision that the Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1521(b) of Pub. L. 99-514 applicable to real estate transactions closing after Dec. 31, 1986, see section 1521(c) of Pub. L. 99-514, set out as a note under section 6045 of this title.

Amendment by section 1523(b)(1) of Pub. L. 99-514 applicable to payments made after Dec. 31, 1986, see section 1523(d) of Pub. L. 99-514, set out as an Effective Date note under section 6050N of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 152(b) of Pub. L. 98-369 provided that: “The amendment made by this section [amending subsec. (e) of this section] shall take effect on the date of the enactment of this Act [July 18, 1984].”

Amendment by section 722(h)(1), (2) of Pub. L. 98-369 applicable as if included in amendments made by Interest and Dividend Tax Compliance Act of 1983, Pub. L. 98-67, see section 722(h)(5)(A) of Pub. L. 98-369, set out as a note under section 643 of this title.

EFFECTIVE DATE

Section applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as an Effective Date of 1983 Amendment note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31, 643, 6682, 6705, 7205, 7431 of this title.

[§§ 3451 to 3456. Repealed. Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369]

REPEAL OF WITHHOLDING ON INTEREST AND DIVIDENDS

Pub. L. 98-67, title I, § 102(a)-(d), Aug. 5, 1983, 97 Stat. 369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) IN GENERAL.—Subtitle A of title III of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to withholding of tax from interest and dividends) [subtitle A (§§ 301-308) of title III of Pub. L. 97-248, which enacted sections 3451 to 3456 of this title, amended sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title and enacted a provision set out as a note above] is hereby repealed as of the close of June 30, 1983.

“(b) CONFORMING AMENDMENT.—Except as provided in this section, the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

“(c) REPEAL NOT TO APPLY TO AMOUNTS DEDUCTED AND WITHHELD BEFORE SEPTEMBER 2, 1983.—

“(1) IN GENERAL.—If, notwithstanding the repeal made by subsection (a) (and the provisions of subsection (b)), an amount is deducted and withheld before September 2, 1983, under subchapter B of chapter 24 of the Internal Revenue Code of 1986 (as in effect before its repeal by subsection (a)), the repeal made by subsection (a) (and the provisions of subsection (b)) shall not apply to the amount so deducted and withheld.

“(2) ELECTION TO HAVE PARAGRAPH (1) NOT APPLY.—Paragraph (1) shall not apply with respect to any payor who elects (at the time and in the manner prescribed by the Secretary of the Treasury or his delegate) to have paragraph (1) not apply.

“(d) ESTIMATED TAX PAYMENTS.—For purposes of determining the amount of any addition to tax under section 6654 of the Internal Revenue Code of 1986 with respect to any installment required to be paid before July 1, 1983, the amount of the credit allowed by section 31 of such Code for any taxable year which includes any portion of the period beginning July 1, 1983, and ending December 31, 1983, shall be increased by an amount equal to 10 percent of the aggregate amount of payments—

“(1) which are received during the portion of such taxable year after June 30, 1983, and before January 1, 1984, and

“(2) which (but for the repeal made by subsection (a)) would have been subject to withholding under subchapter B of chapter 24 of such Code (determined without regard to any exemption described in section 3452 of such subchapter B).”